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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,684	09/25/2003	Hideto Yamada	742421-79	4419

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EXAMINER	
LUONG, VINH	

ART UNIT	PAPER NUMBER
3682	

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/669,684	YAMADA ET AL.	
	Examiner	Art Unit	
	Vinh T. Luong	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 February 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 September 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Vinh T. Luong
Primary Examiner

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11/15/05, 2/23/04,*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *IDS on 9/25/03*.

1. The drawings are objected to because:

(a) The drawings are inconsistent with each other. For example, Figs. 2D and 4 show that the bracket 9 and the cover 13 are formed as separate pieces. See paragraph [0041] of the specification. However, Fig. 3 shows that the bracket 9 and the cover 13 are formed as one-piece as evidenced by their hatchings; and

(b) The drawings should show the plane upon which a sectional view in Fig. 3 or 4 is taken.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The Information Disclosure Statements (IDSs) filed on November 15, 2005; February 23, 2004; and September 25, 2003 have been considered. The Examiner drew a line through the

word "FULL" in column T^6 of the IDS on November 15, 2005 because the Applicant submitted the English abstracts only, not the full translation of the cited references.

3. Claims 9 and 10 are objected to because of the following informalities, such as, (a) no antecedent basis is seen for the term, e.g., "it" in claim 9; and (b) the referential numeral "6c" in claim 10 should be enclosed by parentheses. Appropriate correction is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms, such as, "*can be* removed" and "*can* swing" in claim 1 and "slid*able*" in claim 8 are vague and indefinite in the sense that things which may be done are not required to be done. For example, in claim 1, the first bracket can be, but is not required structurally to be removed from the vehicle side member by a crash load on the front side of the automobile. See "discardable" in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986), "crimpable" in *Application of Collier*, 158 USPQ 266 (CCPA 1968), "removable" in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and "comparable" in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

It is unclear whether the term that appears at least twice, such as, "a crash load" in claims 1 and 8 refers to the same or different things. See double inclusion in MPEP 2173.05(o).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 6, and 7, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Miyoshi et al. (JP 2001-138878 cited by Applicant and used in the rejections of the Japanese Patent Office).

Regarding claim 1, Miyoshi teaches an automobile pedal supporting structure for an operation pedal 16 disposed behind a dash panel 1 of an automobile, comprising: a first bracket 5, the front end of the first bracket 5 being fixed on the dash panel, and the rear end of the first bracket 5 being fixed on a vehicle-side member 2 which is inherently more rigid than the dash panel 1 so that the first bracket 5 can be removed from the vehicle-side member 2 by a crash load on the front side of the automobile; and a second bracket 12, the front-end lower part of the second bracket 12 being pivotally attached to the first bracket 5 (by a caulking pin 11) so that the second bracket 12 can swing, the rear-end upper part of the second bracket 12 being fixed on the vehicle-side member 2 so that the second bracket 12 can be removed from the vehicle-side member 2 (Fig. 3) by said crash load on the front side of the automobile, and the operation pedal 16 being pivotally attached to the second bracket 12 (by a pin 15) so that the operation pedal 16 can swing, wherein the first bracket 5 and the second bracket 12 are placed to substantially overlap each other; the rear end of the first bracket 5 and the rear-end upper part of the second bracket 12 are fixed together on the vehicle-side member 2; and a turn promoting member 7, 10, 10a (Fig. 2) is provided, which is connected from the vehicle-side member 2 through the rear-end outside of the first bracket 5 to the upper part of the second bracket 12 and promotes a turn of the second bracket 12 toward the vehicle-lower side by using a backward movement of the

first bracket 5 toward the vehicle-rear side caused by said crash load on the front side of the automobile.

Regarding claim 6, the turn promoting member 7, 10, 10a is configured so that a larger backward movement of the first bracket toward the vehicle-rear side makes the turn of the second bracket 12 larger.

Regarding claim 7, the operation pedal 16 is a brake pedal.

8. Claims 1-4 and 6-8, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Tsujita (JP 2000-264180 cited by Applicant and used in the rejection of the Japanese Patent Office).

Regarding claim 1, Tsujita teaches an automobile pedal supporting structure for an operation pedal 5 disposed behind a dash panel 2 of an automobile, comprising: a first bracket 6, the front end of the first bracket 6 being fixed on the dash panel 2, and the rear end of the first bracket 6 being fixed on a vehicle-side member 3 which is inherently more rigid than the dash panel 2 so that the first bracket 6 can be removed from the vehicle-side member 3 by a crash load on the front side of the automobile; and a second bracket 16, the front-end lower part of the second bracket 16 being pivotally attached to the first bracket 6 so that the second bracket 16 can swing, the rear-end upper part of the second bracket 16 being fixed on the vehicle-side member 3 so that the second bracket 16 can be removed from the vehicle-side member 3 (Fig. 3) by said crash load on the front side of the automobile, and the operation pedal 5 being pivotally attached indirectly to the second bracket 16 (by a pin 11) so that the operation pedal 5 can swing, wherein the first bracket 6 and the second bracket 16 are placed to substantially overlap each other (Fig. 2); the rear end of the first bracket 6 and the rear-end upper part of the second bracket 16 are

fixed together on the vehicle-side member 3 (Fig. 1); and a turn promoting member 17 (Figs. 1 and 2) is provided, which is connected from the vehicle-side member 3 through the rear-end outside of the first bracket 6 to the upper part of the second bracket 16 and promotes a turn of the second bracket 16 toward the vehicle-lower side by using a backward movement of the first bracket 6 toward the vehicle-rear side caused by said crash load on the front side of the automobile. *Ibid*, English abstract.

Regarding claim 2, the turn promoting member is configured by a wire member 17 connected from the vehicle-side member 3 through the rear end outside of the first bracket 6 over to the upper part of the second bracket 16 (Fig. 2).

Regarding claim 3, a movement restriction member 17a is provided on said rear end of the first bracket 6 so that a transversal movement of the wire 17 with respect to the rear end portion of the first bracket 6 is prevented.

Regarding claim 4, said movement restriction member 17a includes a guide member 17a (Fig. 1) in which the wire member 17 is inserted is provided at the rear end of the first bracket 6.

Regarding claim 6, the turn promoting member 17 is configured so that a larger backward movement of the first bracket 6 toward the vehicle-rear side makes the turn of the second bracket 16 larger.

Regarding claim 7, the operation pedal 5 is a brake pedal.

Regarding claim 8, the guide member 17a is a tubular shape member so that the wire member 17 is set to slidable in the guide member 17a when the first bracket 6 is removed from the vehicle-side member 3 by said crash load on the front side of the automobile.

9. Claims 1-3, 6, and 7, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Sukemoto (JP 11-115698 cited by Applicant and used in the rejection of the Japanese Patent Office).

Regarding claim 1, Sukemoto teaches an automobile pedal supporting structure for an operation pedal 2 disposed behind a dash panel 20 of an automobile, comprising: a first bracket 4, the front end of the first bracket 4 being fixed on the dash panel 20, and the rear end of the first bracket 4 being fixed on a vehicle-side member 22 which is inherently more rigid than the dash panel 20 so that the first bracket 4 can be removed from the vehicle-side member 22 by a crash load on the front side of the automobile; and a second bracket 9, the front-end lower part of the second bracket 9 being pivotally attached to the first bracket 4 (by a pin 30) so that the second bracket 9 can swing, the rear-end upper part of the second bracket 9 being fixed on the vehicle-side member 22 so that the second bracket 9 can be removed from the vehicle-side member 22 by said crash load on the front side of the automobile, and the operation pedal 2 being pivotally attached indirectly to the second bracket 9 (by a pin 5) so that the operation pedal 2 can swing, wherein the first bracket 4 and the second bracket 9 are placed to substantially overlap each other (Fig. 3); the rear end of the first bracket 4 and the rear-end upper part of the second bracket 9 are fixed together on the vehicle-side member 22 (Figs. 1 and 4); and a turn promoting member 19 is provided, which is connected from the vehicle-side member 22 through the rear-end outside of the first bracket 4 to the upper part 9b of the second bracket 9 and promotes a turn of the second bracket 9 toward the vehicle-lower side by using a backward movement of the first bracket 4 toward the vehicle-rear side caused by said crash load on the front side of the automobile. *Ibid*, English abstract.

Regarding claim 2, the turn promoting member is configured by a wire member 19 connected from the vehicle-side member 22 through the rear end outside of the first bracket 4 (at 12a in Figs. 1 and 3) over to the upper part of the second bracket 9 (Fig. 2).

Regarding claim 3, a movement restriction member 9b is provided on said rear end of the first bracket 9 so that a transversal movement of the wire 19 with respect to the rear end portion of the first bracket 4 is prevented.

Regarding claim 6, the turn promoting member 19 is configured so that a larger backward movement of the first bracket 4 toward the vehicle-rear side makes the turn of the second bracket 9 larger.

Regarding claim 7, the operation pedal 2 is a brake pedal.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claim 5, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsujita (JP 2000-264180).

Tsujita teaches the invention substantially as claimed. However, Tsujita does not teach the guide member being of made of resin.

It is common knowledge in the art to form Tsujita's guide member of resin in order to have a rigid but lightweight construction. The resin is a well-known material in pedal art as evidenced by, e.g., US Patent No. 4,009,623 issued to Smith et al. and US Patent No. 4,598,457 issued to Kiwak et al. It is well settled that selection of known material based on its suitability for the intended use is obvious. *In re Leshin*, 125 USPQ 416 (CCPA 1960) and MPEP 2144.07.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form Tsujita's guide member of the resin material in order to have a rigid but lightweight construction as taught or suggested by common knowledge in the art.

13. Claim 5, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsujita (JP 2000-264180) in view of Kiwak et al. (US Patent No. 4,598,457) or Smith et al. (US Patent No. 4,009,623).

Tsujita teaches the invention substantially as claimed. However, Tsujita does not teach the guide member being of made of resin.

Kiwak or Smith teaches the well-known resin material for making the brake pedal in order to have a rigid but lightweight construction. See, e.g., Kiwak, column 1, lines 49-51. See *In re Leshin, supra.*

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form Tsujita's guide member of the resin material in order to have a rigid but lightweight construction as taught or suggested by Kiwak/Smith.

14. Claims 9 and 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

15. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Brooks (side member 20), Sando (brackets 16A and 16B), Cordero (brackets 4 and 5), Thisleton et al. (brackets A and C), and Notake et al. (brackets 104 and 116 in Fig. 17).

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

April 20, 2006

Vinh T. Luong
Primary Examiner